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October 16, 1995

Mr. William Caton
Acting Secretary
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 93-48
Notice of Proposed Rule Making
Policy and Rules Concerning Children's Television Programming

Dear Mr. Caton:

On behalf of Westinghouse Broadcasting Company, a division of Westinghouse Electric Corporation, enclosed herewith for filing with the Commission are an original and eleven copies of *Comments of Westinghouse Broadcasting Company*, filed in response to the Commission's *Notice of Proposed Rule Making* in the above referenced proceeding, pursuant to the Commission's rules and policies.

Should there be any questions or concerns, please contact the undersigned.

Respectfully submitted,

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Its Counsel

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SUMMARY

Serving the educational and informational needs of our nation's children is an important obligation of the broadcasting industry. Westinghouse welcomes this responsibility as part of its overall obligation to serve the public interest in its programming.

Westinghouse supports the Commission's proposals to improve the flow of information to parents by identifying informational and educational children's programming in program guides. Similarly, simple but complete records of a station's children's programming should be placed in its public inspection file on a quarterly basis. Westinghouse also supports the Commission's refined definition of core educational and informational programs, including the requirement that these programs should have education as a significant purpose. Education should continue to be broadly defined to include furthering a child's social and emotional development. While most programs should be regularly scheduled, specials, short form programs and PSAs are valuable for children and should contribute towards satisfying a station's obligation.

The Commission should not adopt quantitative standards, including a standard hidden within the sheep's clothing of "processing guidelines." Not only are such standards contrary to Congressional intent and violative of the First Amendment, but the record developed in this proceeding shows that they are unnecessary. Rather, the Commission should adopt a three year monitoring period to evaluate

the impact of any information, reporting, and definitional rules that may be adopted in this proceeding.

In short, broadcasters will respond to the challenge of children's programming in the same conscientious and consistent manner in which they have fulfilled their general public service obligations through strong news and public affairs programming. Any regulatory scheme adopted by the Commission in the children's area should mirror that which has been effective for other public interest programming. This will allow adequate Commission and public review and, at the same time, enable broadcasters and programmers to find creative ways to meet the unique needs of children in each local community.

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responsibility in exchange for the right to use the public airwaves. Public service to our children is certainly an important element of this obligation and one which Westinghouse welcomes. It agrees with Congress that "television can assist children to learn important information, skills, values and behavior, while entertaining them and exciting their curiosity to learn about the world around them."⁴ In this spirit, Westinghouse recently announced that it would implement plans to increase the amount of educational and informational children's programming on its stations, and on the CBS network upon closing of its acquisition of the network.

Service to the public for all age groups is the bedrock of our system of free over-the-air broadcasting. Broadcasters provide many hours of news, information and entertainment programming each week – free to the American public. Even before the Act was adopted, broadcasters provided significant children's programming which met the requirements of the Act. Since its adoption, however, the record shows a substantial increase in the amount of quality programming available for our children on free television. Westinghouse believes these efforts will continue without major new regulatory requirements.

The Commission's efforts in this Notice to clarify broadcasters' obligations under the Act are to be commended. Refining the definition of qualifying programming, improving the information available to parents concerning such programming, and setting forth simple clear reporting requirements are all laudatory objectives which Westinghouse supports. However, quantitative program requirements, whether in the form of "processing guidelines" or absolute standards, is not consistent with the intent of Congress, is not allowed by the First Amendment, and is simply not necessary. Each local broadcaster must be free to determine the appropriate mix of quantity and quality of children's programming necessary to meet the needs of its own community. Such local decision making has been the staple of FCC public service evaluation

³ 47 U.S.C. sec. 303b(a)(2).

⁴ Act, Title 1, sec. 101.

throughout its history. It has served the public well in the news, information, and public affairs areas. It will continue to serve the public well with respect to children's programming.

In summary, Westinghouse urges the Commission to adopt a children's programming regulatory scheme similar to that currently in place for evaluating licensees' general interest public service programming. Over the years, the Commission has rejected quotas and excessive reporting requirements in relation to such programming. Quarterly Reports noting significant programs, which are available for public inspection and Commission evaluation, have sufficed. No quantitative standards for news and public affairs programming are deemed necessary. As strengthened by new procedures, designed to provide parents with additional information to help their children make intelligent programming choices, the existing reporting model is sufficient to insure broadcaster compliance with the Act.

Information and Reporting

Broadcasters should identify children's educational and informational programs for all program listings and report on their children's programming efforts on a quarterly basis in their public inspection files.

Westinghouse strongly supports the Commission's proposals to increase the flow of information to the public concerning stations' educational and informational children's programming. Identifying this programming in program guides is an excellent idea. There are numerous examples of such guides – the weekly newspaper television section, the daily newspaper television section, TV Guide magazine, as well as onscreen TV guides made available by many cable services. These guides are available to virtually every parent. All broadcasters should identify that programming they deem to be educational and informational when reporting it to these informational listings. Parents can then review these guides on a weekly, daily, or even hourly basis to help their children make sound programming decisions.

Westinghouse also supports the Commission's proposal to continue to require stations to report on their children's programming activities in their public inspection files. These reports can be on a quarterly basis, concurrent with existing station procedures creating quarterly Significant Program Reports. Making the children's report a separate section of this quarterly filing, to simplify finding it for public review, is an excellent idea. Westinghouse stations currently employ this procedure and have found that it provides for convenient access by members of the public. Current requirements concerning listing the date, time, duration and a short description of the program are useful, and a short description of how the program meets the educational and informational needs of children could be added. Compiling and reporting this information is not overly burdensome and would be helpful to the public.

In short, Westinghouse believes that the current model of reporting significant news and public affairs programs that meet the local public interest is an excellent model for reporting this information in the children's area. It is not overly burdensome to report all "core" children's programming, along with a representative sampling of short form programs, PSAs, and specials. This will allow the public to get a representative snap shot of the station's children's efforts, just as it gets a representative snapshot of the station's other public interest programming efforts through the quarterly report.

Definition Of "Core" Children's Programming

In general, Westinghouse supports the Commission's proposed definition of core children's programming. Any definition should continue to include programming which furthers the emotional and social development of children. Specials, short form programs and PSAs should also contribute.

The Commission's clarification of its "core" educational programming definition will be helpful to broadcasters in complying with the Act. Westinghouse generally supports the various elements of the definition. Specifically, we agree with the Commission's conclusion that

“broadcasters should be permitted to exercise programming discretion to the fullest extent possible”⁵ and that “giving broadcasters wide latitude to make their own children’s programming judgments would foster creativity.”⁶ Therefore, any definition should continue to respect these precepts.

With minor clarifications, Westinghouse believes the Commission’s proposed definition in paragraph 36 of the Notice meets these objectives.

1. **Programs should be specifically designed to meet the educational and informational needs of children ages 16 and under and these programs should have education as a significant purpose.** This does not mean that such programs can not have entertainment as a significant element as well. Experience teaches that entertainment is an absolutely essential element of educational programs in order to attract children to the educational content.
2. **The programming report should identify a specific educational objective and target child audience for each program.** This requirement will help the public and the Commission review a station’s performance when necessary and help the station insure that it is on target in meeting its educational children’s objectives. The Commission should make clear that an acceptable educational objective continues to be furthering a child’s social and emotional development. This objective has been specifically endorsed by Congress and recognized by the Commission.
3. **The program should be aired between the hours of 6 a.m. and 11 p.m.** This is certainly a reasonable time frame for attracting substantial children’s audiences and should be an option for local stations. Research has shown that many children do watch television between 6 and 7 a.m. and this should be an acceptable time period for airing some children’s programming.⁸ Nor is there a danger that this will lead to the overuse of this early morning time period. Studies have shown that the vast majority of current children’s programming occurs

⁵ Notice at paragraph 34.

⁶ Memorandum Order and Opinion, 6 FCC Rcd at 509.

⁷ See Comments of Senator Inouye, 136 Cong. Rec. S 10122 (daily ed. July 19, 1990), and Report and Order In the Matter of Policies and Rules Concerning Children’s Television Programming and Revision of Programming and Commercialization Policies, 6 FCC Rcd 2111, 2114-15.

⁸ See Comments of the National Association of Broadcasters, MM Docket No. 93-48, dated July 15, 1994, at 4.

after 7 a.m.⁹ This is just one example of market forces driving the appropriate response to the Act. Stations want to attract substantial children's audiences to these programs. Therefore, most are scheduled when children are in the audience. There is no need for the government to legislate market scheduling decisions, where the market is operating to meet the purposes of the Act.

4. **The program should be regularly scheduled.** This is an appropriate requirement for "core" programs since it will allow parents to help in the planning of their children's viewing. However, specials, PSAs, and short form programs should continue to be considered significant elements of a station's overall efforts to satisfy the Act, especially where such programs are promoted on-air or in regularly published program listings.
5. **Limiting programs to a substantial length, such as 15 or 30 minutes, is not necessary and would unduly interfere with the creative ability of programmers to design programming to attract children's attention and to associate it with other programming which will attract children to the educational content.** Programs of shorter than 15 or 30 minutes can also be regularly scheduled. For example, regularly scheduled kids news reports, which may last 5 or 10 minutes, should certainly count as "core" programming, as long as they are identified as such and the time they are aired is promoted. Long form programming is not necessary as a requirement of "core" programming if parents are informed where and when to find the short form programming. Many stations air 2 and 3 hour news blocks on weekend mornings. A popular segment of such newscasts is children's news, often hosted by a child. These segments may only be 5 to 10 minutes long and may appear at several times during the long form newscast. Stations would normally schedule the kids news reports at regular time periods during the hour. These time periods could be promoted, kids could learn about them, and could tune in to view their favorite kids report. Such programming should contribute toward satisfying a station's obligation.
6. **Finally, the programs should be identified as educational children's programming in all program guides that solicit information from the station.** This will assist parents in helping their children make wise viewing choices and should be encouraged.

Westinghouse firmly believes that a combination of the above noted informational, reporting, and definitional rules will allow licensees to clearly understand and perform their

⁹ The 1990 Children's Television Act: It's Impact on the Amount of Educational and Informational Programming, National Association of Broadcasters, June 1994.

obligations under the Act. Similarly these requirements will allow parents to find the station's educational and informational children's programming and help their children view as appropriate. Finally, these requirements will allow the Commission to review and evaluate a station's performance in connection with its renewal application, just as the Commission can review and evaluate a station's performance under its other public interest programming requirements.

Proposed Quantitative Standards or Processing Guidelines

The Commission should not adopt quantitative standards or processing guidelines. Such standards are contrary to Congressional intent, would violate the First Amendment, and are simply unnecessary. In lieu thereof, a monitoring period to help evaluate the changes adopted in this proceeding would be useful.

Westinghouse opposes government imposition of any quantitative standard, including a standard hidden within the sheep's clothing of "processing guidelines." Rather than such precipitous action, the Commission should use the proposed three-year monitoring period to evaluate the impact of whatever information, reporting, and definitional rules are adopted in this proceeding. Rather than limiting the monitoring to measuring quantitative increases in the amount of children's programming, its purpose should be to assure the Commission that television stations are programming to meet the needs of children. In this regard, the Commission should not assume that current programming initiatives by broadcasters are not sufficient to meet the requirements of the Act. Indeed, there is significant evidence that broadcasters have made substantial new commitments to children's programming since the Act was adopted. This same evidence of voluntary increases in children's programming demonstrates that it is unnecessary for the Commission to adopt quantitative standards to insure the needs of our children are met.

1. Quantitative standards would be contrary to the intentions expressed by Congress.

The legislative history is explicit:

"The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the

amount of children's educational and informational programming that a broadcast licensee must broadcast..."¹⁰

The Commission suggests that processing guidelines would be an alternative to a programming standard by providing a safe harbor to broadcasters. However, it has certainly been the experience of the Commission and broadcasters that a processing guideline invariably has become, in effect, a quantitative standard. Broadcasters will be forced to air no less than the minimal amount of educational programming necessary in order to guarantee a timely license renewal grant. Further, there is a danger that the minimum would become the maximum for all practical purposes. The Commission itself has recognized that "guidelines, even if they will not automatically result in sanctions if violated, conflict with Congressional intent not to establish minimum criteria that would limit broadcasters' programming discretion."¹¹

2. Quantitative standards would violate the First Amendment.

While the Commission's authority to articulate general affirmative obligations for broadcasters is clear,¹² it is equally clear that the First Amendment will not tolerate government rules which interfere with specific programming decisions.¹³ The Commission has never adopted, and the courts have never endorsed, a specific rule requiring licensees to broadcast prescribed amounts of programming in any particular category. This has been the approach repeatedly endorsed by the Commission in its own decisions. Such an approach has allowed it "to assure programming service in the public interest and, at the same time, avoid excessive governmental interference with specific programming decisions."¹⁴ The Commission should not do an about

¹⁰ Children's Television Act of 1989, House Committee on Energy and Commerce, H.R. Report No. 385, 101st Cong., 1st Sess. at 17 (1989). See also Children's Television Act of 1989, Senate Committee on Commerce, Signs and Transportation, Senate Report no. 1, 17, 101st Cong., 1st Sess. at 23 (1989).

¹¹ Memorandum Order and Opinion. In the matter of Policies and Rules Concerning Children's Television Programming and Revisions of Programming and Commercialization Practices. Ascertainment Requirements. and Program Log Requirements for Commercial Television Stations. MM Docket Nos. 90-570 and 83-670, 6 FCC Rcd 5093, (August 1991).

¹² Red Lion Broadcasting Co. v. FCC, 395 U.S. 388-89 (1969).

¹³ Turner Broadcasting System v. FCC, 114 S. Ct. 2445 (1994).

¹⁴ Children's Television and Report and Policy Statement, 50 FCC 2d at 3 (1974).

face on this important constitutional issue, especially where, as here, no need for such dramatic methods to reach the Congressional objective has been shown. Drawing the line at information promulgation, reporting requirements, and definitional clarity, is sufficient to “narrowly tailor” the regulation to further the government interest at stake.¹⁵ Crossing this line to enact quantitative standards, or even processing guidelines, would create regulations that clearly would not pass Constitutional muster.

3. Quantitative standards are unnecessary since the quantity and quality of children’s programming have increased since the Act was adopted.

Simply stated, broadcasters have made significant progress in improving their service to children and continue to do so each year. While some parties may dispute what constitutes an adequate amount, the plain fact is that broadcasters have shown a sensitivity to the special needs of children and have acted to respond to these needs. A study conducted by the National Association of Broadcasters, for example, demonstrates that the amount of regularly scheduled educational and informational children’s programming has increased 81% from the Fall of 1990 to the Fall of 1993. Further, the study indicates the average station now airs over 3 1/2 hours of regularly scheduled educational and informational children’s programming per week. Finally, the study shows that nearly 97% of all such programming airs after 6 a.m. and over 80% starts after 7 a.m.¹⁶

Westinghouse Broadcasting’s own experience parallels that of the industry. On average, its original 5 television stations moved from about one hour of children’s programming to 1.8 hours in 1992, and had increased to an average of 2.2 hours in the first half of 1995. For the 1995/96 television season, most of the 8 television stations, which Westinghouse now owns and operates, are broadcasting 2.5 to 3 hours of children’s programming. All of its currently

¹⁵ FCC v. The League of Women Voters, 468 U.S. 364, 380 (1984).

¹⁶ The 1990 Children’s Television Act: It’s Impact on the Amount of Educational and Informational Programming, National Association of Broadcasters, June 1994.

scheduled children's educational and informational programs would qualify under the Commission's proposed definition. Here is a sampling of these programs:

Beakman's World is a regularly scheduled 30 minute series which enriches young viewers' cognitive development by presenting scientific information in a clear and entertaining manner. Beakman responds directly to viewers' questions and demonstrates ways they may explore scientific phenomena themselves. The series demystifies science using humor and clever video techniques.

National Geographic's Really Wild Animals is a live action regularly scheduled 30 minute series of documentary footage hosted by an animated character Spin. Spin takes young viewers to different corners of the world to learn more about animals and their environment by observing them in their natural habitat. Viewers are invited to send in their drawings and illustrations which are shown on air. Each episode ends with an ecology spot which directs children where to seek further information.

Rap Around is a regularly scheduled, locally produced (in Philadelphia and Boston) 30 minute talk show featuring a panel of local students which deals with serious topics of concern and interest to children. Subjects treated at WBZ include: Boston youths in trouble with the law discussing how to survive in prison, a local environmental preservation drive discussed by young musicians and actors, coping with cancer, teens and AIDS, and a discussion of anti-drug programs with the group *Youth Opposed to Using*. A sampling of KYW's past titles includes "The Fat of the Matter," "Racism," "Best Friends," "Senior Year Pressure," "AIDS," "Civil Rights," "William Penn's Dream," and "The Dating Game."

Nick News is a regularly scheduled 30 minute news format series hosted by Linda Ellerbee. The shows explore "what the world means to kids and what kids can do about it." Each episode focuses on current events, problems and issues facing kids, and activities young people are involved in around the globe.

Sing Me A Story at Bell's Book Music Shop is a weekly 30 minute series combining live action with animation, storytelling, original songs and puppets to teach positive values to young children.

It's Academic is a regularly scheduled local 30 minute game show for academic competition among high school students from MD, VA, and DC produced exclusively at WJZ for nearly a decade. Questions focus on subjects like math, history, and literature. The program begins taping the 3rd week of September each year, and runs every week beginning in October through the super bowl finals in June. "It Academic" celebrates its 25th anniversary this year.

Feed Your Mind is a regularly scheduled 30 minute program designed to nourish the curiosity of 6-11 year old children. Topics like science and nature, money and economics, culture and art, or

factory and building construction are featured in exciting and informative ways from a kid's point of view.

Jack Hanna's Animal Adventures is a 30 minute series which teaches children about animal life, nature, and the environment. Each week zookeeper Jack Hanna travels to places around the world to discover fascinating animals, people, and places.

In addition to regularly scheduled "core" programming, Westinghouse stations produce a variety of short form children's features, hour long specials, and PSA series especially reaching out to children. For example, KYW-TV produces Dave Roger's "Good Kids" regular morning news segment in its local newscast. KPIX has news features for kids such as a recent report on local municipality's outstanding summer reading program. Recently, KDKA-TV produced "Eyewitness News – For Kids Sake", a 30 minute special featuring children doing news stories of interest to their peers.

Special public interest campaigns have always been a hallmark of Group W's local stations. "For Kids Sake" has been an ongoing campaign since its introduction in 1985. WJZ produces a local "Brother to Brother" series of specials 30 to 60 minutes long, which began airing quarterly in June of 1994. These programs which feature WJZ anchors and reporters, highlight the attempts of young men to overcome problems in their lives and "stay on the straight and narrow." WJZ has plans to expand this project by introducing "Brother to Brother – ...and Sister, Too" dealing with problems of young women.

WBZ-TV has featured a "Stop the Violence" public service campaign, a "Jobs for Teens" PSA series and has raised over \$6 million through its Children's Hospital Telethons, now in their 13th year. Group W's KDKA-TV has been raising money for Pittsburgh's Children's Hospital through a telethon for over 40 years and has raised over \$30 million. KYW and KPIX sponsor the Children's Miracle Network Telethon in their cities.

From the network standpoint, ABC currently offers 2 hours of qualified children's programming, NBC, 2 1/2, and Fox, 3 hours. And Westinghouse has recently announced its plans, upon completion of its merger with CBS, to program 2 hours per week on the CBS Network starting in the Fall of 1996 and 3 hours per week starting in the Fall of 1997. Coupled with the NAB's local station survey results, this clearly indicates that broadcasters are taking major steps toward fulfilling their mandate to serve children with quality educational and informational programming. We expect these efforts will continue and that the quality of these programs will increase as programmers gain experience in developing programming which clearly meets the Commission's newly clarified definition.

In short, service to children has always been important for Westinghouse stations and the broadcasting industry. We believe that the kinds of programs and activities noted above are consistent with the commitment and record of our fellow broadcasters. They are a permanent and prominent part of every station's public service commitment to its communities and to its viewers. In this regard, the industry's response to the Commission's elimination of news and public affairs programming guidelines in the early 80s is most instructive. Instead of a decreasing amount of such programming, the reverse has been the trend. For example, Westinghouse stations today air twice as much news and public affairs as they did ten years ago. Over time, the Commission can expect a similar response from broadcasters with respect to their children's programming obligations, thus obviating the need for structured guidelines or quantitative minimums.

Conclusion

In conclusion, it is Westinghouse's firm belief that the broadcasting industry has responded in the past, and will respond in the future, to the challenge of educating and informing our children. We welcome the increased clarity of definition for "core" children's programming; we welcome the opportunity to help the parents in our viewing audience locate educational and

informational programming through appropriate identification in program guides; we welcome the obligation to make our case for strong compliance with the Act through regular and concise reporting in our files; and, most of all, we welcome the continued opportunity to serve millions of children in our audiences and help them to learn more about the world in which they are growing up. In return, we challenge the Commission to rely on the good faith efforts of the free over-the-air broadcasting industry which has been built on the precepts of public service and has consistently and conscientiously fulfilled this obligation in its overall programming. It will do the same for the newly focused obligations under the Children's Television Act of 1990.

Respectfully submitted,


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